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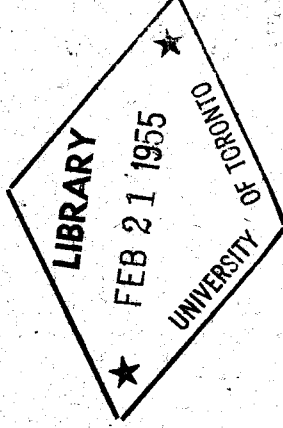
Second Session, Twenty-Second Parliament, 3-4 Elizabeth II, 1955.

THE SENATE OF CANADA

BILL O⁶.

An Act respecting Divorce and Matrimonial Causes.

Read a first time, Tuesday, 15th February, 1955.



Honourable Senator Ase/ATINE.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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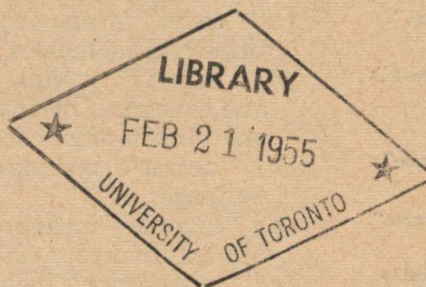
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THE SENATE OF CANADA

BILL O⁶.

An Act respecting Divorce and Matrimonial Causes.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title.

1. This Act may be cited as *The Divorce and Matrimonial Causes Act, 1955*.

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DEFINITIONS.

2. In this Act, unless the context otherwise requires, the expression

- "court". (a) "court" means any of the courts described in section three and includes a judge of such court;
- "cruelty". (b) "cruelty" means legal cruelty as now interpreted 10 and construed by the High Court of England in divorce and matrimonial causes;
- "decree". (c) "decree" includes order, decision, judgment and sentence;
- "divorce". (d) "divorce" means dissolution of marriage, anciently 15 termed divorce *a vinculo matrimonii*;
- "jurisdiction". (e) "jurisdiction" includes power and authority;
- "now". (f) "now" means the time when this Act comes into force;
- "petition". (g) "petition" includes action, suit, writ or other pro- 20 ceeding or process;
- "petitioner". (h) "petitioner" includes plaintiff or other person presenting, instituting or causing to be issued a petition as defined by this section;
- "presentation" and "presented to". (i) "presentation", with relation to a petition as defined 25 by this section, includes institution and commencement, and "presented to", with the same relation, includes instituted in or commenced in;
- "respondent". (j) "respondent" includes defendant.

EXPLANATORY NOTES.

Dissolution of marriage is of statutory origin. The other familiar matrimonial causes had not statutory origin. Any court in Canada which has jurisdiction in divorce has jurisdiction also in the other matrimonial causes.

"Divorce" throughout these notes, means *dissolution of marriage*.

The only courts in Canada to which this Act applies are courts which *now* have jurisdiction to decree divorce.

A court in Prince Edward Island has had that right since 1835 as the term "divorce" was then understood.

A court in Nova Scotia has had that right since 1758.

A court in New Brunswick has had that right since 1791.

No court has that right in Quebec.

A court in Ontario has had that right since 1930.

A court in Manitoba has had that right since 1870.

Courts in Saskatchewan and Alberta have had that right since 1905. Before then the right was inchoate in the N. W. Territories. Hence the right of Saskatchewan and Alberta although these provinces were only formed in 1905 is to the Divorce law of England as of 1870.

A court in British Columbia has had that right since 1858.

No court has that right in Newfoundland.

Prince Edward Island now exercises its right under its own Act of 1835 by virtue of section 129, B.N.A. Act.

Nova Scotia, under the same authority, now exercises its right under its own Act of 1866.

New Brunswick also operates under its own preconfederation Act of 1860.

Ontario operates under Dominion Act, chapter 85 of the Revised Statutes of 1952.

Manitoba, Saskatchewan and Alberta operate under the terms of the respective Acts of 1870 and 1905 which erected them into provinces. The Judicial Committee of the Privy Council has confirmed their right, which extends to the divorce law of England as of 1870.

British Columbia yet operates under a proclamation of Governor Douglas made in 1858, which, it has been held, extends to that province the divorce law of England as in force in 1858.

APPLICATION.

Application
of this Act
in provinces.

3. (1) This Act shall apply to and in those provinces of Canada wherein there are now constituted and maintained courts of divorce and matrimonial causes having jurisdiction to decree dissolution of marriage, and to and in such provinces only.

Application
of this Act
to courts.

(2) In each of such provinces this Act shall apply to and confer jurisdiction upon the court described in subsection one of this section (subsequently in this Act termed "the court") and to and upon that court only.

Jurisdiction
of the court
augmented.

4. The intent of this Act (saving the effect of section 5) is to augment the now existing jurisdiction of the court with relation to divorce and matrimonial causes without disturbing the basis upon which that jurisdiction rests. Accordingly, it is declared that, notwithstanding anything in this Act, the court, to such extent as it now has (whether under any statute, order in council, proclamation or rule of law, or by reason of the time of the enactment, or making, publishing or issuing of any statute, order in council or proclamation or otherwise or at all) jurisdiction with relation to divorce and matrimonial causes, shall continue to derive that jurisdiction as heretofore without any impairment (saving the effect of section 5) by reason of this Act, but that to such further extent as by the terms of this Act any new jurisdiction is capable of being conferred upon the court, and to that extent only, this Act shall apply and such new jurisdiction, so conferred, and that only, shall be deemed to be based upon and derived under this Act.

(2) All such new jurisdiction of the court shall be exercised and applied under rules of court, which it may provide.

DIVORCE.

Restrictions
on petitions
for divorce.

5. (1) No petition for divorce shall be presented to or entertained by the court until a period of three years shall have elapsed since the date of the marriage unless the court, upon application made in accordance with rules of court, shall otherwise allow.

Cases of
hardship or
depravity.

(2) The court shall so allow only in cases of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent.

Effect of
misrepresentation
or concealment.

(3) If at the hearing of the petition it appears to the court that the petitioner obtained under this section leave to present the petition by any misrepresentation or concealment of the nature of the case the court may, if it pronounces a decree nisi, do so subject to the condition that no application to make the decree absolute shall be

The various provinces, therefore, derive their various jurisdictions as now exercised through various sources—Imperial statutes, a Dominion Statute, Provincial statutes, orders in council, Proclamations and the common law. In some of the provinces the gap between the date of the law of England which applies to them and the present time is broad.

This Act has been framed in terms designed to enable the proper court in each of the provinces to supplement its existing jurisdiction by addition thereto of such portion of what is now the law of England as will, in the result, make the total jurisdiction of each and all of them substantially the same, to wit, substantially, the law of divorce and matrimonial causes as it is now in England, preserving, in each province, however, so far as its now existing jurisdiction is concerned, its now existing *source of jurisdiction*. For example the Maritime provinces will retain their pre-confederation Acts, so far as they go and they will resort to this Act only for any *new* jurisdiction to be found in it. So with the other provinces according to their circumstances. The formula for this application of the Act is expressed by sections three and four, especially the latter. This procedure will cause the least possible disturbance in the application of the Act, which will be easily adapted to the differing conditions in each province.

Section 4 presents a novel departure. Except in what is bound to be a rare case a marriage cannot be dissolved within its first three years.

Sections 5, 6, 7, 8 and 9 deal with divorce, sections 10 and 11 with judicial separation, sections 12 and 13 with nullity, section 14 with alimony, sections 15 to 18 cover general matters.

Since section 16 of the Act extends the provisions of chapter 15 of the Dominion statutes of 1930, now consolidated as c. 84 of the R.S. 1952, to deportation of an alien husband as well as desertion and to *any* matrimonial cause, it is proposed to repeal that Act.

made until after the expiration of such period of three years or it may dismiss the petition without prejudice to any petition which may be brought after the expiration of such period of three years upon the same, or substantially the same, facts as those proved in support of the petition so 5 dismissed.

Relevant considerations for guidance of court.

(4) In determining any application made under this section for leave to present a petition the court shall have regard to the interests of any children of the marriage and to the question whether there is reasonable probability of a 10 reconciliation between the parties before the expiration of such period of three years.

Misconduct within three years after marriage.

(5) Nothing in this section shall be deemed to prohibit the presentation, after the elapse of such period of three years, of a petition based upon matters which have occurred 15 before the expiration of that period.

Section not to apply to adultery.

(6) This section shall not apply in the case of a petition for divorce on the ground of adultery.

Grounds of petition for divorce by either husband or wife.

6. (1) A petition for divorce may be presented either by the husband or the wife to, and it may be entertained by, the 20 court, on the ground that the respondent

(a) has since the celebration of the marriage committed adultery;

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the 25 presentation of the petition;

(c) has since the celebration of the marriage treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at 30 least five years immediately preceding the presentation of the petition.

Grounds of petition by wife only

(2) A petition for divorce may be presented by the wife to, and it may be entertained by, the court, on the ground that her husband has, since the celebration of the marriage, 35 been guilty of rape, sodomy or bestiality.

Meaning of "care and treatment".

(3) For the purposes of this section a person of unsound mind shall be deemed to be under care and treatment only whilst he is

(a) detained in pursuance of an order or inquisition 40 competently made or had under authority of a statute in force in the province concerned or as a criminal lunatic; or

(b) receiving treatment as a voluntary patient pursuant to any statute in force in the province concerned, being 45 treatment which follows without any interval a period of such detention as aforesaid.

Duty of court on presentation of petition for divorce.

7. (1) On a petition for divorce it shall be the duty of the court to enquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties and also to enquire into any countercharge which is made against the petitioner. 5

Proofs required.

- (2) If the court is satisfied on the evidence that
- (i) the case for the petition has been proved; and
 - (ii) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or has not connived at or condoned the adultery, or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and 10
 - (iii) the petition is not presented or prosecuted in collusion with the respondent or either of the respondents; 15

the court, subject to section 8, shall pronounce a decree of divorce, but if the court is not satisfied with respect to any of the aforesaid matters it shall dismiss the petition. 20

When court not bound to decree divorce.

8. The court, notwithstanding the provisions of section 7, shall not be bound to pronounce a decree of divorce and may dismiss the petition if it finds that the petitioner has during the marriage been guilty of adultery or if, in the opinion of the court, the petitioner has been guilty 25

- (a) of unreasonable delay in presenting or prosecuting the petition;
- (b) of cruelty towards the other party of the marriage;
- (c) where the ground of the petition is adultery or cruelty, of having without reasonable excuse deserted, or having without reasonable excuse wilfully separated himself or herself from the other party before the adultery or cruelty complained of; 30
- (d) where the ground of the petition is adultery or unsoundness of mind or desertion, of such wilful neglect or misconduct as has conduced to the adultery or unsoundness of mind or desertion. 35

PRESUMPTION OF DEATH.

Proceedings for decree of presumption of death and dissolution of marriage.

9. Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court, if satisfied that such reasonable grounds exist, may, by decree, presume the death and dissolve the marriage, with liberty to the petitioner lawfully to marry again. 40 45

Seven years
absence.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time shall be evidence that he or she is dead until the contrary is proved. 5

Practice and
procedure.

(3) The practice and procedure under this section shall be, as nearly as may be, the same as in ordinary proceedings in the court for a divorce.

JUDICIAL SEPARATION.

Decree of
judicial
separation.

10. (1) A petition for judicial separation may be presented to the court either by the husband or the wife on any grounds on which a petition for divorce might have been presented, or on the ground of failure to comply with a decree of restitution of conjugal rights or on any ground on which a decree of judicial separation may now be pronounced in the court to which the petition is presented. 15

Sections 7
and 8 to
apply.

(2) The provisions of sections 7 and 8, relating to the duty of the court on presentation of a petition for divorce and the circumstances in which such a petition shall or may be granted or dismissed, shall apply in like manner to a petition for judicial separation, and where the court in accordance with such provisions grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent. 20

Divorce
following
judicial
separation.

11. (1) Where an intending petitioner for a decree of divorce has previously been granted a decree of judicial separation he or she shall not be prevented from presenting his or her petition for divorce, nor the court be prevented from pronouncing a decree of divorce, by reason only of the granting of such previous decree, although it was made upon the same or substantially the same facts as those proved in support of the petition for divorce. 25 30

Previous
decree may
be accepted
as proof of
alleged
misconduct.

(2) On any such petition for divorce the court may treat the decree of judicial separation as sufficient proof of the adultery, desertion or other ground on which it was granted, but the court shall not pronounce a decree of divorce without receiving evidence from the petitioner. 35

Effect of
desertion
in such
proceedings.

(3) For the purposes of any such petition for divorce a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation shall, if the parties have not resumed cohabitation and the decree has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce. 40

AVOIDANCE.

New grounds
for decree
of avoidance.

12. Subject to section 13, in addition to any other grounds on which, in the province and in the court to which the petition has been presented, a marriage is by law void or voidable, a marriage shall be voidable by the court on the grounds

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(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;

(b) that either party to the marriage was at the time of the marriage either of unsound mind or a mental defective within the meaning of any statute in force in the province of the court concerned or subject to recurrent fits of insanity or epilepsy;

(c) that the respondent was at the time of the marriage suffering from venereal disease of a communicable form; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

Limitation
of effect of
section
twelve.

13. (1) Notwithstanding the provisions of section 12, in the cases specified in paragraphs (b), (c) and (d) thereof the court shall not grant a decree unless it is satisfied

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(a) that the petitioner was at the time of the marriage ignorant of the facts alleged; and

(b) that proceedings looking to avoidance were instituted within a year from the date of the marriage; and

(c) that marital intercourse with the consent of the petitioner has not occurred since the discovery by the petitioner of the existence of the grounds for a decree.

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Extent to
which decree
shall relate
back.

(2) In the case of a marriage avoided pursuant to paragraph (a) of section 12 the decree shall relate back to such date, not earlier than three months after the date of the marriage, as shall be fixed and named in the decree by the court.

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Extent to
which decree
shall relate
back.

(3) In the case of a marriage avoided pursuant to paragraphs (b), (c) or (d) of section 12 the decree shall relate back to a date, not earlier than the time of discovery by the petitioner of the existence of the grounds for a decree, and such date shall be fixed and named in the decree by the court.

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Issue
legitimate.

(4) Any child born of a marriage avoided pursuant to paragraphs (b) or (c) of section 12 shall be a legitimate child of the parents thereto notwithstanding such avoidance.

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Marriage
void by
law not
validated.

(5) Nothing in this section or in section 12 shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

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ALIMONY.

Powers of
court.

14. (1) When a petition for divorce or judicial separation or avoidance of marriage has been presented to the court under and pursuant to any one or more of sections 6 to 13, the court shall have power to order the provision of alimony, the settlement of the wife's property, the application of property which is the subject of marriage settlements and the securing of money for the benefit of the children of the marriage, and proceedings to obtain any such order may, subject to and in accordance with rules of court, be commenced at any time after the presentation of the petition: 5
Provided that if the practice of the court provides for a decree nisi no order other than an interim order for the payment of alimony shall be made unless and until a decree nisi has been pronounced, and no such order, save in so far as it relates to the preparation, execution or approval of a deed or instrument, nor any settlement made in pursuance of any such order, shall take effect unless and until the decree is made absolute. 15

Proviso.

Money may
be ordered to
be applied
for benefit
of children.

(2) The court may, if it thinks fit, on any decree of divorce or avoidance of marriage made under and pursuant to this Act, order the husband, or (in the case of a petition for divorce by a wife on the ground of her husband's insanity) order the wife to secure for the benefit of the children such gross sum of money or annual sum of money as the court may deem reasonable: Provided that the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child will attain twenty-one years of age. 20 25

Proviso.

GENERAL.

Clergyman
not bound
to marry
divorced
persons or
to permit
marriage
in church
or chapel.

15. No clergyman shall be compelled or bound to solemnize the marriage of any person whose former marriage has been dissolved on any ground and whose former husband or wife is still living or to permit the marriage of any such person to be solemnized in the church or chapel of which he is the minister. 30

Domicile
when
husband
deserts
wife or is
deported as
an alien.

16. Where a wife has been deserted by her husband, or where her husband has been deported from Canada under any law for the time being in force relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in Canada the court shall have jurisdiction for the purpose of any proceedings 35 40

under this or any other Act or law in force in the province concerned relating to divorce and/or matrimonial causes, notwithstanding that the husband has changed his domicile since the desertion or deportation.

Repeal.

17. Chapter 84 of the Revised Statutes of Canada, 1952, 5 the *Divorce Jurisdiction Act* and sections 4, 5 and 6 of the *Marriage and Divorce Act*, chapter 176 of the Revised Statutes of Canada, 1952, are repealed.